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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 GRANT CHARLES RHODES,
12 CDCR # V-60392

13 Plaintiff,

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15 vs.

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17 CALIFORNIA DEP'T OF CORRECTIONS
18 AND REHABILITATION,

19 Defendant.
20
21

Civil 12cv0075 JLS (POR)
No.

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*;
AND**

**(2) DISMISSING ACTION FOR
SEEKING MONETARY DAMAGES
AGAINST DEFENDANTS WHO ARE
IMMUNE AND AS FRIVOLOUS
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)**

22 Plaintiff, a state inmate currently incarcerated at Centinela State Prison in Imperial,
23 California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C.
24 § 1983. Plaintiff has also filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
25 U.S.C. § 1915(a).

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1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the United
 3 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
 4 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is
 5 granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493
 6 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).
 7 Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee in
 8 installments, regardless of whether the action is ultimately dismissed for any reason. *See* 28
 9 U.S.C. § 1915(b)(1) & (2).

10 The Court finds that Plaintiff has submitted an affidavit which complies with 28 U.S.C.
 11 § 1915(a)(1), and that he has attached a certified copy of his trust account statement pursuant to
 12 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust account statement shows that
 13 he has insufficient funds from which to pay an initial partial filing fee.

14 Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [ECF No. 2] and
 15 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the Court further
 16 orders the Secretary of the California Department of Corrections and Rehabilitation ("CDCR")
 17 to garnish the entire \$350 balance of the filing fees owed in this case, collect and forward them
 18 to the Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.
 19 § 1915(b)(1).

20 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

21 The Prison Litigation Reform Act ("PLRA")'s amendments to 28 U.S.C. § 1915 also
 22 obligate the Court to review complaints filed by all persons proceeding IFP and by those, like
 23 Plaintiff, who are "incarcerated or detained in any facility [and] accused of, sentenced for, or
 24 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
 25 probation, pretrial release, or diversionary program," "as soon as practicable after docketing."
 26 *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under these provisions, the Court must sua
 27 sponte dismiss any prisoner civil action and all other IFP complaints, or any portions thereof,
 28 which are frivolous, malicious, fail to state a claim, or which seek damages from defendants who

are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

A. 42 U.S.C. § 1983

To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he complains of was committed by a person acting under color of state law; and (2) that conduct violated a right secured by the Constitution and laws of the United States. *Humphries v. County of Los Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West v. Atkins*, 487 U.S. 42, 48 (1988)).

B. Eleventh Amendment

First, to the extent Plaintiff seeks money damages against the only named Defendant, the California Department of Corrections and Rehabilitation (“CDCR”), the Court finds the claims against this Defendant must be dismissed for failing to state a claim and for seeking damages against defendants who are immune pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) & (iii). The State of California, and the CDCR, an agency of the State of California, are not “persons” subject to suit under § 1983 and are instead, entitled to absolute immunity from monetary damages actions under the Eleventh Amendment. *See Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 53-54 (1996); *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984); *see also Hale v. State of Arizona*, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (holding that a state department of corrections is not a “person” within the meaning of § 1983). Therefore, Plaintiff’s claims for monetary damages against the CDCR are hereby dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) & (iii) without leave to amend.

C. Claim preclusion

Second, Plaintiff’s Complaint is subject to sua sponte dismissal because it appears to be duplicative of a case Plaintiff has filed in the Superior Court of California, County of Monterey. A court “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). *See In re Grant Rhodes*, Sup. Ct. Ca. County of Monterey, Case No. HC 6851.

“Res judicata, or claim preclusion prohibits lawsuits on ‘any claims that were raised or could have been raised’ in a prior action.” *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (citing *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)). Moreover, a prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Because Plaintiff is seeking the same forms of injunctive relief that he brought in the State Court action, the Court hereby **DISMISSES** Plaintiff’s claims for injunctive relief as both issue precluded and frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)(1) without leave to amend.. *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

Plaintiff’s entire action is DISMISSED without prejudice for seeking monetary damages against an immune defendant and as frivolous. Plaintiff will be given the opportunity to file an Amended Complaint, however he may only allege claims for money damages against individual defendants. All claims for injunctive relief are dismissed from this action without leave to amend but without prejudice to Plaintiff to seek relief in his State Court action.

III. CONCLUSION AND ORDER

Good cause appearing, **IT IS HEREBY ORDERED:**

1. Plaintiff’s Motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) [ECF No. 2] is **GRANTED**.

2. The Secretary of California Department of Corrections and Rehabilitation, or his designee, shall collect from Plaintiff’s prison trust account the \$350 balance of the filing fee owed in this case by collecting monthly payments from the account in an amount equal to twenty percent (20%) of the preceding month’s income and forward payments to the Clerk of the Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.**

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1 3. The Clerk of the Court is directed to serve a copy of this Order on Matthew Cate,
2 Secretary, California Department of Corrections and Rehabilitation, 1515 S Street, Suite 502,
3 Sacramento, California 95814.

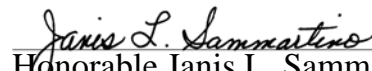
4 **IT IS FURTHER ORDERED** that:

5 4. Plaintiff's Complaint is **DISMISSED** without prejudice as frivolous and for
6 seeking money damages against an immune defendant pursuant to 28 U.S.C. § 1915(e)(2)(b) and
7 § 1915A(b). However, Plaintiff is **GRANTED** forty five (45) days leave from the date this
8 Order is "Filed" in which to file a First Amended Complaint which cures all the deficiencies of
9 pleading noted above. Plaintiff's Amended Complaint must be complete in itself without
10 reference to the superseded pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and
11 all claims not re-alleged in the Amended Complaint will be deemed to have been waived. *See*
12 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

13 5. The Clerk of Court is directed to mail Plaintiff a copy of a Court approved civil
14 rights complaint form.

15 **IT IS SO ORDERED.**

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17 DATED: February 28, 2012

18 
19 Honorable Janis L. Sammartino
20 United States District Judge
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